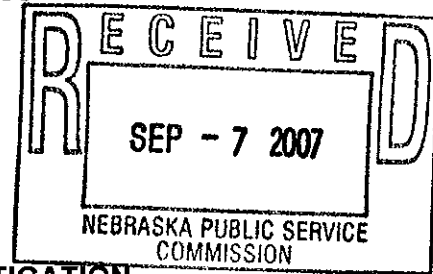


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on its own motion, to investigate jurisdictional issues pertaining to construction and operation of a natural gas pipeline within the state of Nebraska by Nebraska Resources Company, LLC, or any other entity.

Doc. No. NG-0051/
PI-130



CORNERSTONE ENERGY, INC.'S COMMENTS ON INVESTIGATION

INTRODUCTION

Cornerstone Energy, Inc. ("Cornerstone") is engaged in the natural gas marketing business in a variety of states, including Nebraska. In Nebraska, Cornerstone markets gas to commercial and industrial customers. Cornerstone's commercial and industrial customers are directly affected by the number of pipelines in Nebraska and the regulation of those pipelines and their associated entities. As a result, Cornerstone filed a Petition on Formal Intervention in the above-captioned proceeding to ensure that all of Cornerstone's customers are treated fairly both in the areas of access and regulation in regard to any existing or new pipelines in Nebraska.

Cornerstone's comments on the various issues raised by the Commission relating to Nebraska Resources Company, LLC's ("NRC") proposed intrastate pipeline and comments on the additional issues that must be considered if NRC or any other company is allowed to construct an intrastate pipeline are provided below.

DISCUSSION

I. Local Distribution Companies with Volumetric Demand in Excess of 500 Therms Per Day Do Not Constitute High-Volume Ratepayers.

The first question posed by the Commission in its Order Opening Investigation is "does the definition of 'high-volume ratepayer' in *Neb. Rev. Stat. Sec. 66-1802(7)*

include LDCs with volumetric demand in excess of 500 therms per day?” Neb. Rev. Stat. § 66-1802(7) (2003) defines a high-volume ratepayer as “a ratepayer whose natural gas requirements equal or exceed five hundred therms per day as determined by average daily consumption.” Neb. Rev. Stat. § 66-1802(12) (2003) defines a rate as “every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any jurisdictional utility for any service.” Based upon the plain language of these definitions, LDCs are not included in the definition of a high-volume ratepayer.

As stated above, a rate is every compensation collected by a jurisdictional utility for any service. *Id.* LDCs are for the most part, if not exclusively, jurisdictional utilities. A jurisdictional utility or LDC does not charge itself for a service and therefore, does not pay rates. Due to the lack of any rate payment by a LDC to a jurisdictional utility, a LDC is not a ratepayer of any kind, including a high-volume ratepayer.

Even if the plain language of the definitions of high-volume ratepayer and rate did not make it clear that an LDC is not a high-volume ratepayer, the purpose of the Nebraska State Natural Gas Regulation Act makes it clear. “This act creates a regulatory structure through which the Public Service Commission (PSC) would regulate public utilities which provide natural gas.” Statement of Intent for LB 790, p.1 (2003). If a LDC was considered a high-volume ratepayer, a LDC would not be regulated by the Commission. This would defeat the purpose of the Act and the Commission’s regulation of natural gas.

It is only logical that the LDCs would be regulated and thus, should not be considered high-volume ratepayers. The Act was put in place to protect the citizens of

Nebraska. If a LDC is not regulated, the LDC has no protection from the prices imposed by the pipeline and the end-users would have no protection from the excessive prices charged by the intrastate pipeline. For all of these reasons, LDCs do not fall within the definition of a high-volume ratepayer.

II. Double-Piping.

The second question posed by the Commission in its investigation is "does Nebraska's double-piping prohibition under *Neb. Rev. Stat. Sec. 66-1852* apply to a pipeline providing a new interconnection to an LDC?" Nebraska's double-piping prohibition was established to prevent two LDCs from constructing nearly identical service lines to the same customers or the same geographical service territory. Thus, a general double-piping question cannot be answered. Rather, a look at the proposed design and layout of any new pipeline, including its connections to a LDC, would need to be considered in making any decision relating to double-piping.

Following the same principles behind the double-piping prohibition, the question as to whether a new intrastate pipeline should be allowed should be: would the pipeline be used and useful? In essence, would the pipeline actually be used by the various natural gas entities and consumers in the state? If the answer would be that the pipeline would be used, the next question is: would the pipeline be useful? Would the pipeline more efficiently or effectively serve the state of Nebraska than the state is currently being served? Nebraska is currently being efficiently and effectively served by its existing pipelines and natural gas companies, making it difficult to understand what, if any, the need is for an intrastate pipeline.

III. Jurisdiction.

The final two questions asked by the Commission are closely related. As a result, the questions will be addressed together for purposes of Cornerstone's comments. The final two questions are "does the Commission have jurisdiction over an Application under *Neb. Rev. Stat. Sec. 66-1853(1)* for a Certificate of Public Convenience to operate as a 'jurisdictional utility' a pipeline located wholly within the state of Nebraska to deliver natural gas to LDCs and other customers?" and "what other regulatory authorities, including state, federal and local governing bodies of any kind, would have jurisdiction over the proposed NRC Pipeline, and what is the scope of their review?" Before these questions can be addressed, it must be noted that the answers to these questions are somewhat dependant on the actual proposed design of the pipeline. Details of the proposed pipeline have not been publicly provided. As a result, Cornerstone will base its comments on the generic information currently known by it relating to the proposed intrastate pipeline.

The question of the Commission's jurisdiction over an intrastate pipeline is an issue of first impression for the Commission. Thus, it is not surprising that NRC's question relating to the Commission's jurisdiction is somewhat confusing. The wording of the question relating to jurisdiction over an application under § 66-1853(1) can be read to ask whether or not § 66-1853(1) confers jurisdiction upon the Commission. Section 66-1853(1), by itself, is not a jurisdiction-conferring statute. Rather, § 66-1853(1) is a statutory requirement regulating jurisdictional utilities.

Section 66-1853(1) provides that: "... no jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public

convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in the state.” Neb. Rev. Stat. § 66-1853(1) (2003). Thus, § 66-1853(1) does not alone provide the Commission with jurisdiction over anything. Rather, § 66-1853(1) identifies a procedural requirement for jurisdictional utilities to operate in the state of Nebraska. As a result, the question is not whether § 66-1853(1) confers jurisdiction, but whether the Commission has jurisdiction to approve or disapprove the activity requested in the application made pursuant to § 66-1853(1).

The proposed activity to be addressed by the Commission in this investigation is the construction and operation of an intrastate pipeline as a jurisdictional utility. To determine the Commission’s jurisdiction, the statute outlining the Commission’s jurisdiction must be examined. Neb. Rev. Stat. § 66-1804 (2003) provides that “the commission shall have full power, authority, and jurisdiction to regulate natural gas public utilities and may do all things necessary and convenient for the exercise of such power, authority, and jurisdiction.” Section 66-1804 goes on to provide that the Commission’s jurisdiction should be liberally construed. Even with a liberal construction of the Commission’s jurisdiction, it is not clear that the Commission has jurisdiction over an intrastate pipeline for two reasons.

The first reason is that the definition of a natural gas public utility, which is the type of entity which the Commission has jurisdiction over pursuant to § 66-1804, does not clearly include an intrastate pipeline. A natural gas public utility includes entities that control, operate, or manage equipment, plants, or machinery used for the conveyance of natural gas through pipelines in or through any part of the state. Neb.

Rev. Stat. § 66-1803(11) (2003). This definition does not appear to include the actual pipeline itself in the definition of a natural gas public utility. Thus, it appears that the Commission may lack jurisdiction over the intrastate pipeline.

The second reason for the question surrounding the Commission's jurisdiction over intrastate pipelines is the state's decision not to adopt the intrastate pipeline regulations adopted by numerous other states. From the legislative history of the State Natural Gas Regulation Act, it is apparent that the legislature examined the regulations of other states in forming the Act. A number of other states' acts contain lengthy regulations relating to intrastate pipelines. Nebraska's legislature did not include these provisions in the Act. For these reasons, it appears that the Commission may lack jurisdiction over an intrastate pipeline.

Contrary to the state Act, the Natural Gas Act, 15 U.S.C. § 717, et seq., clearly provides FERC with jurisdiction to regulate an intrastate pipeline if the state does not take regulation of the pipeline under the Hinshaw exemption.¹ Due to the lack of clarity regarding the Commission's jurisdiction, combined with FERC's experience with pipeline regulation, FERC should be allowed to determine if a pipeline should be built and to regulate any intrastate pipeline that is constructed.

FERC has considerable experience in regulating natural gas pipelines. FERC regulates all interstate pipelines and has policies and procedures in place to regulate the pipelines. See 18 C.F.R. 152, et seq. In contrast, the Commission has little experience regulating pipelines. In order for the Commission to regulate a pipeline, the Commission would have to incur considerable expense to develop regulations for the

¹ As this Commission knows, the Hinshaw exemption is the statutory change to FERC's jurisdiction which allows states to take jurisdiction over any purely intrastate activity if the state so chooses. 15 U.S.C.A. § 717(c) (2005).

intrastate pipeline which FERC already has at hand. As a result, FERC should be allowed to govern any intrastate pipeline that is allowed to be built.

Based upon the above discussion, and in response to the second jurisdictional question, it is clear that FERC has jurisdiction over an intrastate pipeline and that the scope of its review would include, but not be limited to, a review of whether or not the pipeline should be constructed and the regulation of the pipeline following construction. In contrast, it seems unlikely that a local governing body would have control over the pipeline. This is true because the State Natural Gas Regulation Act was put in place to provide state control of natural gas service due to the breakdown in the local government control.

If, after a determination is made as to whether FERC and/or the PSC has jurisdiction to determine if a pipeline should be built, an intrastate pipeline is constructed, additional agencies may become involved in monitoring the construction. The Nebraska Department of Environmental Quality and the United States Core of Engineers may become involved to ensure that environmental regulations are followed during construction.

IV. If an Intrastate Pipeline is Allowed to be Built, All Marketers Must Receive Open, Non-Discriminatory Access.

The questions posed by the Commission relate to who has the right to determine if an intrastate pipeline should be built and who has the right to regulate an intrastate pipeline that is constructed. Thus, the Commission's questions focus upon who possess regulatory authority, and not the regulations themselves. While the discussion of what regulations should be imposed upon an intrastate pipeline will come in the

future if such a pipeline is allowed, at least at a preliminary level, the basic regulations must be considered before such a pipeline is allowed to be built.²

If an intrastate pipeline is allowed to be constructed, the basic principle of open and non-discriminatory access imposed upon interstate pipelines by the federal regulations must be imposed upon the intrastate pipeline. 15 U.S.C.A. § 717c(b) (2005). A marketer must not be allowed an advantage of sole access or lower costs because of its relationship with the builder of an intrastate pipeline. To allow such an advantage to one company would provide a benefit to certain end-users to the exclusion of others. The purpose of both the federal and state regulations of natural gas are to protect all end-users, not just those whose marketer has a special relationship with the intrastate pipeline. Thus, open and non-discriminatory access is a necessity on any intrastate pipeline.

CONCLUSION

As discussed above, the answers to the questions posed by the Commission are highly dependent upon the proposed design and location of an intrastate pipeline. Thus, Cornerstone has only been able to provide its comments based upon the most generic of information. The specific details regarding the design and location of an intrastate pipeline may alter Cornerstone's analysis and positions on a given issue. By providing these comments, Cornerstone is not waiving its right to provide a modified or changed analysis or position which is the result of additional pertinent information being discovered. With these limitations and reservations in mind, it is Cornerstone's position that:

² If and when additional comments are allowed regarding regulation of an intrastate pipeline, Cornerstone will participate in the proceeding and provide additional and more developed comments on the regulations.

1. an LDC is not a high-volume ratepayer;
2. double-piping may or may not prohibit an intrastate pipeline under state regulation, but without more information, an intrastate pipeline does not seem useful;
3. FERC should regulate any intrastate pipeline; and
4. any intrastate pipeline that is constructed must allow open and non-discriminatory access to all who wish to operate on the pipeline.

DATED this 1st day of September 2007.

Cornerstone Energy, Inc., Petitioner for
Intervention,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 7th day of September 2007, a true and correct copy of the foregoing Cornerstone Energy, Inc.'s Comments on Investigation was served upon the following by regular U.S. Mail, postage prepaid, properly addressed as follows:

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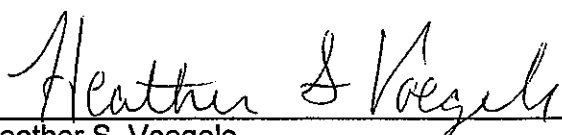
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